



**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 10/26/04

AGENDA ITEM \_\_\_\_\_

WORK SESSION ITEM WS #2

**TO:** Mayor and City Council  
**FROM:** Director of Community and Economic Development Department  
**SUBJECT:** Alcoholic Beverage Outlet Regulations

**RECOMMENDATION:**

It is recommended that the City Council review and comment on this report.

**DISCUSSION:**

When the Alcoholic Beverage Outlet Regulations were adopted in 1993, the stated purpose was to stem the proliferation of establishments selling alcoholic beverages within the City, with the notion that they present problems which affect residents, businesses, property owners, visitors, and workers of Hayward. The regulations were intended to ameliorate problems associated with establishments engaged in the sales of alcoholic beverages by restricting their locations in relation to one another and to their proximity to facilities primarily devoted to use by children and families with children. And, with the establishment of the requirement for conditional use permits for new establishments selling alcoholic beverages, conditions could be established to prevent the undesirable impacts on the community. A copy of the Alcoholic Beverage Outlet Regulations is attached as Exhibit A. There have been many changes in the fourteen years since adoption of the ordinance, particularly in the downtown. Also, the passage of time has provided an opportunity to examine the effectiveness of the ordinance in reducing problems associated with the sales of alcoholic beverages. This work session is intended to provide opportunities for information gathering about whether there should be any changes to the ordinance.

In the past several years, the Planning Commission and the City Council have acted upon use permit applications from business operators seeking to sell alcoholic beverages in Hayward. Some of these applications included requests for exceptions to the City's current Alcoholic Beverage Outlet Regulations with respect to distance requirements. Also, the Council has been asked to make findings that the sale of alcoholic beverages in "over-concentrated" census tracts would serve the public convenience or necessity. The Department of Alcoholic Beverage Control (ABC) requires cities to make this finding when the maximum number of licenses considered acceptable per ABC's standards within a census tract is exceeded. The Police Department has also worked independently of the decision makers to ensure that operating conditions are attached to ABC licenses. Expressing a desire to maintain fairness in the treatment of applicants, the City Council has asked to re-examine the City's Alcoholic Beverage Outlet Regulations.

Staff has made the following observations with regard to the implementation of the Alcoholic Beverage Outlet Regulations.

- In the past decade, the Alcoholic Beverage Outlet Regulations, and particularly the separation requirements, have served as a tool to deter businesses engaged in the sales of alcoholic beverages from locating in Hayward. This has been true for small retail stores selling alcoholic beverages, service stations, and restaurants with a separate bar area. Staff does not have the data to show to what extent these regulations have affected efforts to attract favorable businesses which may be engaged in the sale of alcoholic beverages.
- Since the adoption of the Alcoholic Beverages Outlet Regulations, there has been only one instance when the use permit of an establishment engaged in the sale of alcoholic beverages was revoked. It should be pointed out, however, that this action coincided with the ABC's revocation of their ABC license to engage in the sales of alcoholic beverages, so the effectiveness of the use permit as a tool for eliminating an incompatible use in that instance was negligible.
- There are approximately 216 ABC licenses issued to businesses in Hayward, some of which are inactive. (Lists of establishments engaged in the sale of alcoholic beverages both by address and by type of ABC license are attached as Exhibit B.) Only about 8 percent of the businesses with ABC licenses have a use permit. There have been 18 use permits granted and one use permit revoked. Eleven of the use permits were issued for establishments that were already engaged in the sale of alcoholic beverages. (*When the regulations were adopted, a provision was made to require use permits for a change of the character of an existing operation and as changes of ownership of the establishments occurred. Since that time, a requirement for a use permit for changes in ownership has since been disallowed by case law*). Therefore, since 1993, use permits have been issued for six new establishments selling alcoholic beverages. These are Applebee's, Neumanali wine bar on B Street, Crossroad's World Market on Jackson Street, Kumbala Night Club on Foothill, Olive Grove Night Club on West Winton Avenue, and Cinema Place on B Street. Of these six, three are operational at this time. A complete list of the establishments with use permits is attached as Exhibit C.
- Many of the problems stemming from the sales of alcoholic beverages are associated with establishments that do not have use permits. As a result, the City must depend on ABC to achieve compliance with ABC regulations and the Hayward Police Department is charged with the responsibility of maintaining order. The City's power to eliminate the root of the problem, which is typically the management of the business, is limited.
- When the ownership of an establishment selling alcoholic beverages changes hands, the Police Department works with ABC in crafting appropriate conditions of the ABC license. Due to the relatively frequent turnover of the ABC licenses, this mechanism is more effective in establishing conditions under which alcoholic beverages are sold than is the use permit process, which does not apply in instances of change of ownership.

- The City is limited in terms of the conditions of approval that can be applied to use permits for businesses engaged in the sale of alcoholic beverages. For example, if a business has an ABC license to sell beer and wine, the City cannot limit the type or brand of beverage. Also, because of the independent authority of the ABC to attach conditions to the ABC license, their conditions may differ from, and may supersede, those established by the City under the use permit process. A copy of ABC's *Enforcement Manual* is attached as Exhibit D.
- With respect to existing restaurants with separate bars, it has been staff's experience that there have been no significant police problems associated with restaurants with separate bars as compared to restaurants engaged in the sales of alcoholic beverages *without* a separate bar. Also, staff does not view most restaurants as appreciably problematic with respect to the sales of alcoholic beverages.
- The ability to enforce all conditions of approval of use permits for alcoholic beverage sales depends to a great extent on staffing and work load priorities. For example, a typical condition of approval requires servers of alcoholic beverages to complete responsible beverage service training. Because of the employee turnover in these establishments, it is not feasible for City staff to regularly check to make sure that each server has completed this training. Nonetheless, the Police Department sponsored three ABC training sessions, which provided ABC license holders and their employees a four-hour course on how to run a successful liquor establishment.
- In the past few years, the success of reducing police calls for service to businesses engaged in the sales of alcoholic beverages can be attributed the members of the Hayward Police Department working closely with ABC. The Police Department has been successful in obtaining grants from the ABC to help fund their efforts, and Hayward has been cited by ABC throughout California as a City to emulate in achieving the objectives of the grant. From July 2003 to July 2004, the Hayward Police Department made over 150 arrests for ABC violations. Thirty arrests were for businesses selling alcoholic beverages to minors. Working with ABC, the liquor licenses of two problem establishments were revoked. In addition to enforcement activities, the Police Department conducted 74 premise inspections, where they informed merchants of ABC laws and guidelines.
- For general ABC liquor licenses for on-site consumption, the number of premises is limited to one for each 2,000 inhabitants of the county in which the premises are situated. For general ABC liquor licenses and for wine and beer licenses for off-site consumption, the number is limited to one for each 2500 inhabitants of the city in which the establishment is located. And the number of premises for which off-sale beer and wine licenses is issued in a city, in combination with the number of general off-sale liquor sales, is limited to one for each 1,250 inhabitants. These criteria are broken down further to the number of licenses within a census tract, for what appears to be an equal distribution of ABC licenses per population regardless of the nature of the census tract (commercial, industrial or residential). Based on this information, the total number of ABC licenses for both on- and off-sale establishments should not exceed 119. ABC data show that Hayward has 89 off-sale establishments. Regardless of these limitations, ABC can issue a license for

off-sale beer and wine if it can be shown that the establishment is not in a high-crime area and the public convenience or necessity would be served by the issuance of the license.

- Staff has discovered that the information supplied by ABC is not consistently reliable with regard to over-concentration. In checking data supplied by ABC, there is almost a 30 percent error rate in identifying census tracts in which ABC-licensed establishments are located. Staff has learned that this misinformation is not limited to Hayward.

There have been no criteria established for Hayward upon to make a determination that the sale of alcoholic beverages in areas considered "over-concentrated" would serve the public convenience or necessity, although it has been generally conceded that sales of alcoholic beverages are acceptable in the downtown, which is looked upon as an entertainment center. Council may want to consider where it would be most appropriate to concentrate establishments with ABC licenses or where to avoid locating these establishments.

- Recognizing that the source of problems relating to the sales of alcoholic beverages stemmed from existing establishments without use permits, the cities of Oakland and Vallejo adopted ordinances removing the "nonconforming" status from these businesses and considered that they have retro-active "deemed approved" use permits. Along with the "deemed approved" use permits came conditions that relate primarily to nuisance issues, such as fighting, drug sales, loitering, theft, etc. This approach provides another mechanism to abate uses that are not in compliance with their conditions. However, it also involves a considerable amount of staff time to develop and implement.


In consideration of the observations noted above, staff believes that the Alcoholic Beverage Outlet Regulations merit further examination. City Council is asked to speak to issues they have encountered in their dealings with the business community and neighborhoods. Some issues worthy of discussion are:

1. Are the distance requirements between establishments that sell alcoholic beverages the best tool for determining whether, or where, the number and type of these establishments should be located?
2. Should use permits be required for restaurants with separate bars as long as design and performance standards are established?
3. How might the use permit process be modified to mesh with the ABC process?
4. How should the issue of "over-concentration" be addressed? Is it preferable to concentrate businesses engaged in the sale of alcoholic beverages in various parts of the city or to distribute them more equally?

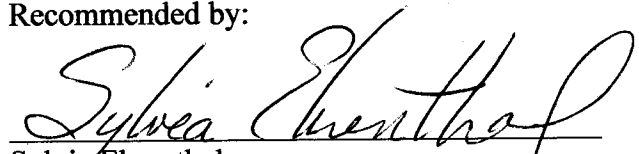
Commpré has indicated that the City Council should determine its vision for Hayward with regard to sale of alcoholic beverages and has expressed a willingness to provide input into the vision and establishment of goals and objectives of an ordinance. If Council wishes to go forward with re-examining the Alcoholic Beverage Outlet Regulations, staff will work with Commpré to review

the ordinance and return in the spring with recommended changes. A letter from Linda A. Pratt, Program Director for Commpre, is attached as Exhibit E.

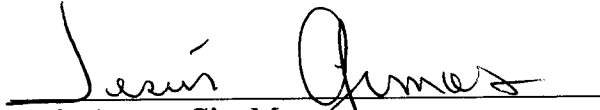
Prepared by:

  
Dyana Anderly, AICP  
Planning Manager

Recommended by:

  
Sylvia Ehrental  
Director of Community and Economic Development

Approved by:

  
Jesús Armas, City Manager

- Attachments:
- Exhibit A. Alcoholic Beverage Outlet Regulations
  - Exhibit B. List of establishments engaged in the sale of alcoholic beverages by type of ABC license and address
  - Exhibit C. List of establishments with use permits
  - Exhibit D. ABC's *Enforcement Manual*
  - Exhibit E. Letter from Linda A. Pratt, Program Director for Commpre

## SEC. 10-1.2735 SPECIAL STANDARDS AND CONDITIONS FOR CERTAIN USES

b. **Alcoholic Beverage Outlet Regulations.**(1) **Purpose.**

- (a) In adopting these regulations, it is recognized that the proliferation of establishments selling alcoholic beverages within the City of Hayward presents problems which affect residents, businesses, property owners, visitors, and workers of Hayward.
- (b) Problems which can result include, but are not limited to: crime, littering, loitering, public intoxication, disturbance of the peace, discouragement of more desirable and needed commercial uses, and other similar problems connected primarily with the regular congregation of persons around establishments engaged in the sale of alcoholic beverages for consumption on or off the premises.
- (c) It is also recognized that existence of such problems creates a serious impact on the peace, health, safety and welfare of residents of nearby areas including fear for the safety of children and visitors to the area, as well as contributing to the deterioration of neighborhoods and concomitant devaluation of property and destruction of community values and quality of life.
- (d) These regulations are intended to ameliorate the types of problems identified above by restricting the location of establishments selling alcoholic beverages in relation to one another and their proximity to facilities primarily devoted to use by children and families with children.
- (e) The use permit process is a means to review the effects of establishments selling alcoholic beverages on neighboring uses on a case by case basis, and to prevent the undue concentration of and undesirable impacts on the community stemming from such uses by the imposition of reasonable conditions upon the operation of such uses.

(2) **Definitions.**

For the purpose of these regulations, certain terms and words shall have the following meaning:

- (a) **Establishment.** 'Establishment' shall mean either an on-sale or off-sale liquor establishment.
  - (i) 'On-sale liquor establishment' shall mean any business wherein alcoholic beverages are sold on the premises and are to be consumed on the premises including, but not limited to, any business which has obtained or intends to obtain a California Department of Alcoholic Beverage Control License type 40, 41, 42, 47, 48, 61, or 63. This shall also include any facility, inclusive of a portion thereof, which is rented out for special event functions wherein alcoholic beverages are sold or given away on the premises and are to be consumed on the premises.
  - (ii) 'Off-sale liquor establishment' shall mean any business that sells alcoholic beverages in original, unopened packages for consumption off of the premises where sold including, but not limited to, any facility which has

obtained or intends to obtain a California Department of Alcoholic Beverage Control License type 20 or 21.

- (b) Bona Fide Restaurant. 'Bona fide restaurant' shall mean a place which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and does not have a bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, and which is further outlined in section 23038 of the State of California Alcoholic Beverage Control Act, and which maintains a minimum of 51 percent of its gross receipts from the sale of meals. For the purpose of verifying compliance with the foregoing sales requirement, the sales receipts, accounting ledgers, and any other business records pertaining to the sales of food and alcohol shall be open for inspection by the Chief of Police or his or her designee during regular business hours of the restaurant upon 72 hours' prior written notice.
  - (c) Night Club. 'Night club' shall mean any establishment which engages in the sale of alcoholic beverages in conjunction with providing live entertainment (including the playing of recorded music by a disc jockey) or dancing between the hours of 6:00 p.m. to 2:00 a.m. regardless of whether such establishment is simultaneously offering full restaurant meal service.
- (3) Conditional Use Permit for New Establishments.

Except as otherwise provided herein, no new on-sale or off-sale liquor establishment may sell alcoholic beverages for either on-site or off-site consumption unless a conditional use permit has been approved for such establishment. A conditional use permit shall not be required if the establishment is one of the following:

- (a) Retail stores having 10,000 square feet or more of floor area and which devote not more than 5 percent of such floor area to the sale, display, and storage of alcoholic beverages;
  - (b) Bona fide restaurants excluding such restaurants that operate as night clubs; or
  - (c) Special event functions such as neighborhood or community festivals, provided all of the following criteria are met:
    - (i) The person, group, business, or organization sponsoring the event secures all applicable permits from the City of Hayward;
    - (ii) The person, group, business, or organization sponsoring the event obtains a temporary on-sale license from the State of California Department of Alcohol Beverage Control for each of the dates the event will be held; and
    - (iii) The duration of the event does not exceed three consecutive days or five days in any single calendar year.
- (4) Posting of Conditions of Approval.

A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.

(5) Findings.

- (a) In making the findings required by Section 10-1.3225 governing conditional use permits, the Planning Commission, or the City Council on referral or appeal, shall consider whether the proposed use will result in an undue concentration in the area of establishments dispensing alcoholic beverages.
- (b) The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following: Residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

(6) Application For Conditional Use Permit.

In addition to the requirements set forth in Section 10-1.2815 and any other applicable City regulation, an application for a conditional use permit shall set forth and include the following:

- (a) The type of Alcoholic Beverage Control license the applicant is seeking for the establishment;
- (b) The true and complete name and address of each lender or share holder with a 5 percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid; and
- (c) A statement by the applicant indicating whether or not such applicant has at any time been convicted of any crime other than minor traffic offenses and, if so, the nature of the crime for which the applicant was convicted and the date and jurisdiction of the conviction.

(7) Requirements For New On-Sale Liquor Establishments.

- (a) No new on-sale liquor establishments shall be permitted within a radius of 500 feet of any other on-sale or off-sale liquor establishment (with the exception of new or existing establishments which are exempted by subsection (3) above), or of any school, public park, library, playground, recreational center, day care center, or other similar use.
- (b) Notwithstanding the above:
  - (i) Outside of the Central City Zoning District, the Planning Commission may recommend to the City Council a lesser alternative distance requirement in a particular instance, if the following is found: that the public convenience and necessity will be served by an alternate space requirement and that alternative measures to assure public health and safety are provided with respect to sale and use of alcoholic beverages;
  - (ii) Within the Central City Zoning District no on-sale liquor establishment shall be established or maintained within a radius of 100 feet of any off-sale liquor establishment (with the exception of new or existing establishments which are exempted by subsection (3) above), or of any school, public park,



library, playground, recreational center, day care center, or other similar use;  
and

- (iii) Within the Central City Zoning District, no more than two on-sale liquor establishments shall be permitted per block side or face, with the exception of new or existing establishments which are exempted by subsection (3) above. Determination of location on a block side or block face shall be made by referring to the street address of the on-sale liquor establishment on a block between the two immediate cross streets.

(8) Requirements For New Off-Sale Liquor Establishments.

No new off-sale liquor establishments will be permitted within a radius of 500 feet of any other on-sale or off-sale liquor establishment (with the exception of new or existing establishments which are exempted by subsection (3) above), or of any school, public park, library, playground, recreation center, day care center, or other similar use.

(9) Conditions.

To implement official City policy and to attain the purpose for requiring use permit approval, as stated in Section 10-1.3205 and in subsection (1) above, as well as the findings listed in Section 10-1.3225, the Planning Commission, or the City Council on referral or appeal, may attach to approvals such conditions as it deems necessary. Violations of any of these conditions unless explicitly stated otherwise shall be independent grounds for permit revocation. These conditions may include, but are not limited to:

- (a) Commission by the permittee or any employee of the permittee of a criminal offense for which 1) the permitted establishment was the location where the offense was committed or where there is a direct correlation between the permittee's establishment and the criminal offense; and 2) Such criminal offense is found to be detrimental to the public health, safety, or general welfare.
- (b) Establishments shall provide exterior lighting which is adequate for the illumination and protection of the premises. Lighting shall be installed in such a manner that it does not shine into adjacent residential properties.
- (c) Establishments shall maintain trash and garbage storage areas that are enclosed by a solid fence or wall and screened from the view of abutting properties or the public right-of-way.
- (d) Establishments with off-sale privileges shall prominently post a sign on the exterior of the premises stating that consumption of alcoholic beverages in public is prohibited by law pursuant Chapter 4 of the Hayward Municipal Code.
- (e) Establishments shall discourage patrons and visitors from loitering in public rights-of-way, parking areas, and in front of adjacent properties.

(10) Minimum Conditions for Establishments in the Central City District.

In addition to the minimum conditions for on-sale and off-sale liquor establishments outlined in subsections (7) and (8) above, the following conditions shall apply in the Central City District, the violation of any of which shall constitute independent grounds for permit revocation:

- (a) No beer or malt liquor shall be sold in bottles or containers larger than 12 ounces for off-site consumption;
- (b) Beer and malt liquor in containers of 12 ounces or less shall not be sold in units of less than one six-pack for off-site consumption;
- (c) Wine shall not be sold in bottles or containers smaller than 750 ml and wine coolers shall not be sold in containers smaller than 12 ounces and in units of less than one four-pack for off-site consumption;
- (d) Distilled spirits shall not be sold in bottles or containers smaller than 750 ml for off-site consumption; and
- (e) Consumption of alcoholic beverages shall not be permitted on any property adjacent to the licensed premises which is also under the control of the owner of the liquor establishment.

(11) Existing Establishments Selling Alcoholic Beverages.

Any establishment lawfully operating prior to the effective date of these regulations and licensed by the State of California for the retail sale of alcoholic beverages for on-site or off-site consumption may continue such operations after the effective date of this ordinance. Upon the occurrence of either of the following, however, operation of the establishment shall require approval of a conditional use permit:

- (a) The establishment changes its type of liquor license within a license classification; or
- (b) There is a substantial change in the mode or character of operation. As used herein, the phrase 'substantial change of mode or character of operation' shall include, but not be limited to, expansion in the amount of area devoted to the sales or consumption of alcoholic beverages, a pattern of conduct in violation of other laws or regulations, or a cessation of use for a period of six months or more.

(12) Modifications in Permitted Establishments Selling Alcoholic Beverages.

Any permitted establishment operating under either a conditional or an administrative use permit after the effective date of these regulations shall apply for a modification of its use permit pursuant to Section 10-1.3260 of the Hayward Municipal Code when either of the following occurs:

- (a) The establishment changes its type of liquor license within a classification; or
- (b) There is a substantial change in the mode or character of operations of the establishment as defined in subsection (11) above.

(13) Notice.

In addition to the notice required by Section 10-1.2820, in the case of applications for conditional use permits or appeals of administrative use permits pursuant to this section, notice shall also be provided to occupants of buildings located on parcels within 300 feet of the perimeter of the subject property for which use permit approval is sought.

<b>Type of ABC License</b>	<b>Description of ABC License and Address of Business Engaged in Sales of Alcoholic Beverages</b>
<b>Type 20 – Off-Premise Sales of Beer and Wine</b>	<i>Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.</i>
	<i>Address</i>
	B Street – 826
	Third Street - 22766
	B Street – 1082
	A Street – 218
	A Street - 236
	A Street - 112
	A Street – 505 (Quik Stop)
	Winton Avenue - 370
	A Street - 340
	Harder Road – 130 (7-Eleven)
	Jackson Street – 339 (7-Eleven)
	Jackson Street – 147 (1 pending; 1 active)
	Santa Clara Avenue – 24883 (7-Eleven)
	Hesperian Boulevard – 20800 (Dollar Tree)
	Oliver Drive - 2601
	Baumberg Avenue - 3046
	Barrington Court – 2536 (Warehouse)
	Mohr Drive - 24495
	Depot Road – 2829 (Linda's Flowers)
	Aldengate – 2175 (7-Eleven)
	West Harder Road – 392
	Gading Road - 26718
	Harder Road – 187
	Mission Boulevard – 24476 (7-Eleven)
	West Tennyson Road - 1163

	West Tennyson Road - 1157
	West Tennyson Road - 480
	West Tennyson Road – 375 (7-Eleven)
	San Antonio Road - 30631
	Whipple Road – 2499 (Target)
	Hesperian Boulevard – 28260
<b>TYPE 21 - Off-Premise Sales of Beer, Wine and Distilled Spirits</b>	<i>Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.</i>
	<i>Address</i>
	Foothill Boulevard - 21460
	Foothill Boulevard – 22280 (Safeway)
	Hayward Boulevard - 26775
	B Street – 1681
	Vermont Street – 22610
	Foothill Boulevard – 22695 (Albertson's)
	B Street – 858
	A Street – 1201
	Mission Boulevard – 21995
	Foothill – 22501 (Longs)
	A Street - 210
	Jackson Street - 566
	Winton Avenue - 396
	Jackson Street – 271 (Safeway)
	Santa Clara Street – 25151 (Albertson's)
	Jackson Street – 201
	Hathaway Avenue – 22330 (Costco)
	West Jackson Street – 243 (Longs)
	Santa Clara Avenue - 24895
	Santa Clara Avenue - 24989
	West A Street - 430
	Blackwood Avenue – 22624
	Hesperian Boulevard - 27445
	A Street - 1086
	Hesperian Boulevard – 24500 (Albertson's)

	Hesperian Boulevard – 24536 (Thrifty Payless)
	Hesperian Boulevard – 24249
	West Harder Road – 426
	West Tennyson Road - 1145
	Harder Road – 153
	Mission Boulevard – 27826
	Mission Boulevard – 31091 (Thrifty – Payless)
	Mission Boulevard – 31049 (Albertson's)
	Mission Boulevard – 25516
	Garin Avenue - 551
	Mission Boulevard – 32575 (Mexico Super)
	Mission Boulevard – 29633
	Mission Boulevard – 31161
	Mission Boulevard – 27575
	Mission Boulevard - 26905
	Mission Boulevard - 28150
	Mission Boulevard - 33103
	Mission Boulevard – 24601 (Smart and Final)
	Mission Boulevard - 24933
	Mission Boulevard – 22555 (Albertson's)
	West Tennyson Road - 1190
	West Tennyson Road - 338
	West Tennyson Road -583
	West Tennyson Road -50
	West Tennyson Road - 121
	Hesperian Boulevard - 27300
	Hesperian Boulevard - 27220
	Hesperian Boulevard - 28460

<b>Type 40 Bar Selling both On- and Off-Sale Beer Only</b>	<i><b>Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be o the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.</b></i>	
	<i><b>Address</b></i>	<i><b>Census Tract</b></i>
	Mission Boulevard - 21995	
	A Street – 320	4363
	Mission Boulevard - 24832	4380
	Mission Boulevard - 22595	4381
	West Tennyson Road - 44	4382.02
	West Tennyson Road - 512	4382.02

<b>Type 41 Restaurant Selling Wine and Beer</b>	<i>Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must make actual and substantial sales of meals, during the normal meal hours that they are open, at least five days a week. Minors are allowed on the premises.</i>	
	<i>Address</i>	<i>Census Tract</i>
	Foothill Boulevard - 22218	4312
	Mission Boulevard - 22354	4351.01
	Mission Boulevard - 29587	4351.01
	Mission Boulevard - 22500	4351.01
	Mission Boulevard - 29583	4351.01
	Mission Boulevard - 29615	4351.01
	Hayward Boulevard - 26775 (4 licenses at this shopping center address)	4351.02
	B Street - 2010	
	Foothill Boulevard - 22457	4354
	A Street - 702 (1 license active; 1 pending)	4354
	B Street - 826	4354
	C Street - 944 (Los Compadres)	4354
	C Street - 948 (La Imperial)	4354
	B Street - 1149	4354
	Foothill Boulevard - 22560	4354
	Foothill Boulevard - 22724	4354
	A Street - 1213	4354
	Mission Boulevard - 22841	4354
	Main Street - 22507	4354
	Main Street - 22622	4354
	Mission Boulevard - 21851	4354
	C Street - 920	4354
	A Street - 1235	4354
	A Street - 917	4354
	B Street - 871	4354
	Foothill Boulevard - 22525	4354



	B Street – 1034	4354
	B Street - 792	4354
	B Street – 742 (Neumanali)	4354
	A Street - 114	4363
	Jackson Street - 444	4363
	A Street - 392	4363
	Jackson Street - 320	4363
	Winton Avenue – 384-86	4363
	West Winton Avenue – 213	4367
	Amador Street – 24703 #6	4368
	Amador Street – 24703 #4	4368
	West Jackson Street- 151	4368
	West A Street - 410	4369
	West A Street - 888	4369
	Hesperian Boulevard - 20500	4369
	Hesperian Boulevard - 25036	4370
	Hesperian Boulevard – 25202 (Vasiliki)	4370
	Southland Mall - 18	4370
	West Winton Avenue – 790 (Marie Callender)	4370
	Southland Mall Drive - 303	4370
	Corsair Boulevard - 20950	4371
	Arden Road - 3522	4371
	Industrial Boulevard - 24546	4371
	Hesperian Boulevard – 20413 (Carrow's)	4371
	Hesperian Boulevard – 20777 (Hotel)	4371
	Hesperian Boulevard – 27461	4371
	Hesperian Boulevard - 24748	4372
	Hesperian Boulevard – 24107 (Sizzler)	4372
	Hesperian Boulevard – 24123	4372
	West Winton Avenue - 2042	4372
	Hesperian Boulevard – 24297	4372
	Clawiter Road - 23149	4372
	Hesperian Boulevard – 24039 (Chuck- E- Cheese)	4372
	B Street 846	4354
	Jackson Street - 467	4366.01
	West Winton Avenue – 225	4367
	Southland Drive – 24041 (Applybay's)	4370
	West Winton Avenue – 1275	4370

	Hesperian Boulevard – 25010 (Vasiliki)	4370
	Clawiter Road – 25037 (1 Active; 1 Pending)	4371
	Golf Course Road – 1401 (Skywest)	4371
	West Harder Road - 600	4374
	West Harder Road - 410	4374
	West Harder Road - 436	4374
	Patrick Avenue – 26713	4376
	Tampa Avenue – 27548	4376
	Leidig Court – 27973	4377
	Harder Road – 157	4378
	Harder Road – 219	4378
	Mission Boulevard - 28257	4379
	Mission Boulevard - 26953	4379
	Mission Boulevard – 24052	4380
	Mission Boulevard – 31081	4380
	Mission Boulevard – 25168	4380
	Mission Boulevard – 27167	4380
	Mission Boulevard - 30030	4380
	Mission Boulevard - 31083	4380
	Mission Boulevard - 29617	4380
	Mission Boulevard - 24047	4381
	West Tennyson Road – 1108	4382.01
	West Tennyson Road - 1160	4382.01
	West Tennyson Road - 1104	4382.01
	West Tennyson Road - 665	43802.2
	West Tennyson Road -661-663	43802.2
	West Tennyson Road - 507	43802.2
	Huntwood Avenue - 30982	43802.2
	Industrial Pkwy West -1653	43802.2

<b>Type 47 Restaurant Serving Beer, Wine and Distilled Spirits, with Substantial Sales of Food</b>	<i><b>Authorizes the sale of beer, wine <u>and</u> <u>distilled spirits</u> for consumption on the licensed premises. Authorizes the sale of beer and wine for consumption off the licensed premises. Must operate and maintain the licensed premises as a bona fide eating place. Must make actual and substantial sales of meals, during normal meal hours that they are open, at least five days a week. Minors are allowed on the premises.</b></i>	
	<i><b>Address</b></i>	<i><b>Census Tract</b></i>
	Hesperian Boulevard – 24688	4372
	Mission Boulevard - 29827	4380
	Mission Boulevard - 32681	4380
	Mission Boulevard - 31113	4380
	Mission Boulevard - 29087	4380
	Mission Boulevard -22877	4381
	Mission Boulevard - 22800	4381
	Mission Boulevard - 22365	4381
	Industrial Boulevard - 22555	4381

<b>Type 48 Bar – Night Club</b>	<i>Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain. Food service not required.</i>	
	<i>Address</i>	<i>Census Tract</i>
	B Street – 2059	4353
	Main Street - 22519	4354
	Mission - 21859	4354
	B Street – 939	4354
	Main Street – 22554 1 (pending; 1 active)	4354
	Grand Street – 22580 (El Tapitio revoked)	4363
	Winton Avenue – 390	4363
	Hesperian Boulevard - 25088	4370
	Hesperian Boulevard - 24018	4372
	Hesperian Boulevard - 24740	4372
	Manon Avenue – 27935	4377
	Mocine Avenue – 26050	4378
	Mission Boulevard – 29308	4380
	Mission Boulevard - 25144	4380
	Mission Boulevard - 24744	4380
	Mission Boulevard - 22648	4381
	Mission Boulevard - 24311	4381
	Mission Boulevard - 24061	4381
	West Tennyson Road - 171	4382.02

<b>Type 51 Club</b>	<i>Authorizes the sale of beer, wine and distilled spirits to members and guests only, for consumption on the premises where sold. No off-sale privileges. Food service not required. Minors are allowed on the premises.</i>	
	<i>Address</i>	<i>Census Tract</i>
	Foothill Boulevard – 21406 (Eagles Lodge)	4312
<b>Type 63 (Hospital)</b>		
	<i>Address</i>	<i>Census Tract</i>
	Hesperian Boulevard- 27400	4371
<b>Type 70 Hotel With Happy Hour</b>	<i>Authorizes the sale or furnishing of beer, wine and distilled spirits for consumption on the premises to the establishment's overnight transient occupancy guests or their invitees. This license is normally issued to "suite-type" hotels and motels, which exercise the license privileges for guests "complimentary" happy hour. Minors are allowed on the premises.</i>	
	<i>Address</i>	<i>Census Tract</i>
	Industrial Boulevard – 25921	4371

## USE PERMITS FOR THE SALE OF ALCOHOLIC BEVERAGES

1	The Bistro 1001 B Street	Existing restaurant/bar	Change in Character of Operation (expansion)
2	B Street Bar and Grill 846 B Street	Existing restaurant/bar	Change in Ownership
3	Cheers 22626 Main Street	Existing bar	Change in Character of Operation (expansion)
4	Big Red's Place 27690 Mission Boulevard	Existing bar	Change of Ownership
5	Mission Paradise 3115 Mission Boulevard	Existing bar (Gallagher's)	Change in Character of Operation (expansion of banquet hall)
6	Buffalo Bill's Brewery 1082 B Street	Existing restaurant/bar	Change in Character of Operation (expansion)
7	Neumanalli B Street	Vacant house	Wine bar
8	Applebee's Restaurant 24041 Southland Drive	Site of former restaurant/bar	Restaurant with Separate Bar
9	Smilin' Jacks 32681 Mission Boulevard	Existing restaurant/bar	Change of Ownership
10	Fast Stop Market 2601 Oliver	Existing Convenience Market	Change in Ownership
11	Crossroad's World Market	Existing Small Market	Add beer/wine sales
12	Kumbala Night Club	Vacant building; site of former restaurant/bar	Restaurant/Nightclub
13	Olive Grove Restaurant West Winton Avenue	Industrial/residential uses	Restaurant/Nightclub
14	Turf Club Mission Boulevard	Site of Former Bar	Relocation of Bar to new downtown Address
15	Cinema Place B Street at Foothill	Former Albertson's Market	Multiple Opportunities for sale of alcoholic beverages
16	Manila Garden Hesperian Boulevard	Existing restaurant	Change to Restaurant/ Karaoke/Dancing
17	El Tapitio 22580 Grand	Existing bar	Change of Ownership
18	Uncle Roy's 22648 Mission	Existing bar	Change of Ownership

**2004 Enforcement Manual available in the Office of the City Clerk**

**EXHIBIT D**

# ABC

**Department of Alcoholic Beverage Control**

## **2004 ENFORCEMENT MANUAL**

**State of California**

**ARNOLD SCHWARZENEGGER, Governor**

**Business, Transportation & Housing Agency**

**SUNNE WRIGHT MCPEAK, Secretary**

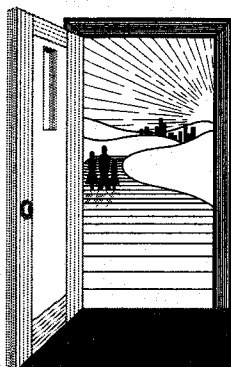
**JERRY R. JOLLY, Director**

October 18, 2004

**RECEIVED**

OCT 19 2004

PLANNING DIVISION

**COMMPRE**

Dyana Anderly  
 Planning Manager  
 City of Hayward  
 777 B Street  
 Hayward, CA 94541

Re: Hayward Alcohol Policy

Dear Dyana,

Pursuant to your request, I have outlined our observations and recommendations for the City Council to consider as they examine direction pertaining to the alcohol policy/ordinance.

22652 Second Street  
 Hayward, CA 94541  
 (510) 247-8207  
 (510) 247-8210 fax



A program of  
 Horizon Services, Inc.

Candidly, I think the Council needs to re-examine the purpose or objective of Hayward's alcohol policy and ordinance. In 1993 the Hayward City Council adopted the ordinance to regulate alcoholic beverage outlets because the city "has a long history of problems associated with alcohol and retail alcohol outlets." The impact of those problems on the community and the difficulty in developing solutions led to the development of the ordinance (*attached please find agenda report, 5/18/93*).

In reviewing the specific provisions of the regulations adopted, it is apparent that the Council is not following the regulations, rather it is using some other criteria to base its decisions upon. For example:

- Definitions of the policy are not used. Instead, a definition is changed to accommodate a use that the City desires. Kumbala Nightclub was approved as a "Bona Fide" restaurant, even though it more accurately met the definition of a "nightclub".
- The minimum 500 foot distance requirement between on-sale and off-sale outlets is routinely ignored or a variance is crafted.
- Within the Central City Zoning District there is a limit of 2 on-sale establishments per block face. This has been disregarded.
- There is also a provision for the Council to establish a lesser alternative spacing requirement for on-sale establishments outside the Central City Zoning District when certain findings are made. These findings have never been discussed and agreed upon with community input.
- Variance to policy is granted despite not being able to make the 3 required findings.

In its turning away from the alcohol ordinance, I would contend that the City no longer has the same goals and objectives as it did in 1993 with respect to alcohol beverage regulations. In 1993 the agenda report stated that the ordinance "strikes a reasonable balance between the community need or desire to reduce the number and severity of problems stemming from establishments engaged in the sale of alcohol and the business and economic need to attract good restaurants to this community and to revitalize the downtown area."



In recent hearings the Council members stated these as reasons for approving uses: (1) it would occupy a currently unoccupied building; (2) it would bring jobs; (3) the business is unique; and (4) it would bring revenue to the City from alcohol sales.

These rationales are not criteria for granting a use under the current policy. If the City has in fact gone in a different direction, than the alcohol policy should reflect that new direction. Therefore, we are recommending that the Council go back to the basics and determine what are the goals and objectives of an alcohol ordinance.

These are some questions to consider:

- (1) What is the Council's objective in bringing in more alcohol establishments? How many? Where will they be located? What level of concentration is acceptable? How much revenue does the City expect from alcohol sales? What is the anticipated dollar costs associated with increased alcohol sales?
- (2) Explicitly state in the policy that the City's goal is to attract entertainment venues, such as nightclubs.
- (3) If the Council's objective is for Hayward to be an "entertainment" venue, than re-zone a section of the City to be the "entertainment" or "alcohol zone".
- (4) What will be done with the remainder of the City, or will the entire City be an "entertainment" or "alcohol zone"?
- (5) Establish different requirements for a variance pertaining to alcohol sales.
- (6) Create new definitions to fit the types of uses the City desires. For example:  
Restaurant Entertainment: *An establishment where food and drink are prepared, served, and consumed within a structure that includes as an integral component of the facility, a full service bar, dance floor, and electric or mechanical games of skill.*
- (7) Review over concentration and set guidelines to what degree or special zoning would be required to allow for it.

In summary, we believe that ordinances should be created so that they become part of the community development process. Community development should be designed to serve all of the members of a community, including youth. Deliberate and careful planning of how, when and where alcohol establishments are placed in a community can ameliorate the effects of them, or alcohol establishments can destroy a community.

We encourage the City Council to go back to the basics of determining their vision of the role alcohol establishments should play in the Hayward community. We would like to continue to provide input into the vision and establishment of the goals and objectives of an ordinance. Thank you for your consideration.

Very truly yours,



Linda A. Pratt, M.A.  
Program Director

attachment



# CITY OF HAYWARD AGENDA REPORT

AGENDA DATE May 18, 1993

AGENDA ITEM \_\_\_\_\_

WORKSESSION ITEM \_\_\_\_\_

TO: Mayor and City Council

FROM: Chief of Police

SUBJECT: AN ORDINANCE AMENDING CHAPTER 10, ARTICLE 1, OF THE  
HAYWARD MUNICIPAL CODE BY THE ADDITION OF SECTION 10-  
1.5074, ALCOHOLIC BEVERAGE OUTLET REGULATIONS.

## RECOMMENDATION:

It is recommended that Council introduce the proposed Ordinance adding the Alcoholic Beverage Outlet Regulations to the City's Zoning Ordinance.

## BACKGROUND/DISCUSSION:

The City of Hayward has a long history of problems associated with alcohol and retail alcohol outlets. These include driving under the influence, public drunkenness, fighting, illegally serving minors or obviously intoxicated customers, illegal gambling, prostitution, noise, traffic, parking and numerous other social and economic problems. In recent years there has been an increase in certain activities commonly associated with alcohol such as derelicts and drunks loitering in business areas, aggressive panhandling, urinating and defecating in public and other similar nuisance problems.

The citizens of Hayward look first to the police to solve these problems. The difficulty lies in the fact that our enforcement and policing efforts primarily address incidents and problems after they occur and, when employed alone, are inadequate to prevent the problems from recurring. Moreover, assistance from the Bureau of Alcoholic Beverage Control (ABC) is limited because of staffing shortages. Other legal and social service resources have proven to be inadequate. Given the tools available to the Hayward Police Department, long term solutions are extremely difficult if not impossible.

The impact these problems have on the community, the excessive demands they generate for police services, and the difficulty in developing solutions, led to the development of these proposed regulations. In this process we conducted

a study of alcohol outlets and the impact of alcohol on demands for police services. We looked at similar regulations in other cities throughout the State, to see what has and has not been effective. We worked with ABC and received a great deal of assistance and input from their staff. We surveyed supermarkets and restaurants in Hayward to develop standards and determine the most appropriate level of enforcement and/or control.

The proposed ordinance represents a long range approach to the solution of some alcohol related problems in Hayward through appropriate land use regulations. These regulations will not impact existing outlets as they operate today. They will, however, give the City of Hayward the tools to control the concentration of alcohol outlets throughout the City and the ability to ameliorate alcohol related problems in the future. First and foremost, they will give the City the authority to impose conditions of operation that meet the needs and desires of the community. Secondly, they give the City the authority to take action against businesses that operate contrary to law and against the interests of the community. Finally, they give the citizens of Hayward a voice in determining the number, type and location of such establishments and in defining acceptable business practices in their community. Because problems will be addressed at a local level there is a greater opportunity to be more responsive to community concerns.

Some of the specific provisions of the regulations include:

1. A requirement that anyone wishing to establish a business involving the sale of alcoholic beverages in the City of Hayward must obtain a conditional use permit.

Exceptions to this are:

- \* "Bona Fide" restaurants. These include restaurants that serve alcohol incidental to meals but do not have a specific area such as a bar/cocktail lounge designated for the primary purpose of selling or consuming alcoholic beverages.
- \* Retail stores with over 10,000 square feet of floor space and who maintain less than 5% of that space for the storage, display and sale of alcoholic beverages.
- \* Special event functions such as neighborhood or community festivals, provided other legal requirements are met.

2. A requirement that a conditional use permit for an existing outlet must be obtained whenever there is a change in ownership, a change in the type of ABC license or, a substantial change in the character or mode of operation.

Note: Substantial change in character or mode of operation is defined in sub-section (k) (2) of the ordinance.

3. A requirement that special information must be submitted to apply for a Conditional Use Permit under this Article.
4. Establishing authority for the City to impose conditions of operation that will insure such outlets do not create a negative impact on the community.
5. Establishing special criteria for the revocation of a Conditional Use Permit involving the sale of alcoholic beverages.
6. Establishing a minimum 500 foot distance requirement between on-sale and off-sale outlets and from schools, libraries, public parks, playgrounds, recreational centers, day care centers and other similar uses.

Within the Central City Zoning District the regulations eliminate the distance requirement between on-sale establishments and establishes a limit of two per block face.

There is also a provision for Council to establish a lesser alternative spacing requirement for on-sale establishments outside of the Central City Zoning District when certain findings are made.

On April 8, 1993 the City's Planning Commission unanimously recommended that Council adopt these regulations. The Commission suggested one change relating to 72 hour written notification before a restaurant's records can be examined. That suggestion has been incorporated into the ordinance.

Following the presentation to the Planning Commission a typographical error in the ordinance was noted on page 3, sub-section (c) (1) where "Retail market..." should have read "Retail store..." This has also been corrected.

During the development of this ordinance and discussions with various groups and individuals the following three issues were raised:

1. Several individuals cited problems in other cities when restaurants were exempt from those ordinances and expressed their concern that "Bona Fide" restaurants are exempt from this ordinance.

Our research shows that "Bona Fide" restaurants, those serving alcohol incidental to meals but without a bar/cocktail lounge, do not represent a significant problem either to the community or to the Hayward Police Department. However, bars and cocktail lounges, whether or not they are part of a restaurant, do present problems or represent a significant potential for problems. For this reason we have made a distinction between "Bona Fide" restaurants and restaurants with bars and cocktail lounges. Our intent is to eliminate regulation where it is not needed and to tailor these regulations to meet Hayward's specific needs.

2. The business community expressed a concern that, as originally drafted, the distance requirement would preclude any additional restaurants from the downtown area.

After meeting with the Downtown Merchant's Association and the Government Relations Committee of the Chamber of Commerce we modified the ordinance to eliminate the distance requirement between on-sale establishments in the Central City Zoning District and established a limit of two on-sale outlets, (bars/cocktail lounges), per block face. In follow-up meetings with these organizations the people who expressed this concern stated the modifications have resolved the issue.

3. The business community also expressed the concern that the Conditional Use Permit process takes an excessive amount of time and will place an unnecessary burden on businesses.

We have been working with staff in other City Departments to explore ways to speed up this process. One has been for the Police Department to provide the staff to process applications and agenda reports relating specifically to the Alcoholic Beverage Outlet Regulations.


During our last meeting with the Government Relations Committee it was suggested that we use the Administrative Use Permit to reduce the processing time. We have not had time to fully explore the legal and procedural issues of this suggestion, however, if it is deemed to be a viable option we will ask Council

for an amendment to the ordinance in the near future.

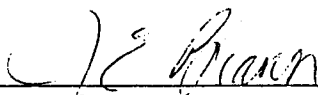
We have gone to great lengths to seek input from community and business groups and individuals. We have listened to their concerns and, where appropriate, modified the ordinance to meet their needs. As of this date we have not received an official response from the Downtown Merchant's Association, however, the Government Relations Committee has stated the Chamber of Commerce will not oppose the ordinance.

This ordinance strikes a reasonable balance between the community need or desire to reduce the number and severity of problems stemming from establishments engaged in the sale of alcohol and the business and economic need to attract good restaurants to this community and to revitalize the downtown area. Clearly, there is wide spread community support for this ordinance and numerous letters to that effect are attached for your review.

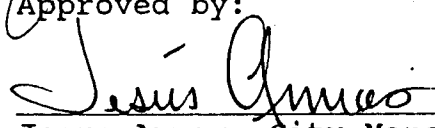
Prepared by:

  
Roger D. Power, Captain of Police

Recommended by:

  
Joseph E. Brann, Chief of Police

Approved by:

  
Jesus Armas, City Manager

Attachments:   A   Letters to Council  
                  B   Staff Report to Planning Commission  
                  C   Minutes of Planning Commission Hearing  
                  D   Negative Declaration  
                  E   Letters to Planning Commission